

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAII SUPERFERRY, INC.)
For a Certificate of Public)
Convenience and Necessity to Engage)
In Operations as a Water Carrier.)

DOCKET NO. 04-0180

ORDER NO. 21194

Filed August 3, 2004
At 3:30 o'clock P.M.

Karen Higashida
Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAII SUPERFERRY, INC.)
For a Certificate of Public)
Convenience and Necessity to Engage)
In Operations as a Water Carrier.)

Docket No. 04-0180

Order No. 21194

ORDER

I.

Background

On July 22, 2004, HAWAII SUPERFERRY, INC. ("Hawaii Superferry"), filed an application for commission approval to operate as a water carrier, pursuant to Hawaii Revised Statutes § 271G-10 and Hawaii Administrative Rules ("HAR") § 6-61-81. On July 23, 2004, Hawaii Superferry and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate") (collectively, "Parties"),¹ submitted a proposed stipulated procedural order ("Proposed Procedural Order"), attached herein as Exhibit A.

Upon review, the commission will approve, adopt and make the Proposed Procedural Order, attached hereto as Exhibit A, a part of this order, provided that: Section III.C., entitled "Copies of Filings and Information Requests" is modified to require any party or participant to file an original, plus

¹Pursuant to HAR § 6-61-62, the Consumer Advocate is an *ex officio* party to any proceeding before the commission.

eleven (11) copies of documents filed with the commission, instead of the proposed original plus eight (8) copies and, because the commission intends to post copies of all filings in this docket on the commission's internet website, any party or participant filing documents with the commission is required to also provide an electronic copy of these documents with the commission. Finally, our approval of the Parties' Procedural Order is subject to further modifications, particularly in the event that persons are granted intervenor or participant status in this docket.

II.

Order

THE COMMISSION ORDERS the Parties' Proposed Procedural Order, filed on July 23, 2004, is approved, adopted and made a part of this order, subject to the modifications and condition noted above.

DONE at Honolulu, Hawaii AUG 03 2004.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By Wayne H. Kimura
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

Benedyne S. Stone
Benedyne S. Stone
Commission Counsel
04-0180.cs

By Janet E. Kawelo
Janet E. Kawelo, Commissioner

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)	
)	
HAWAII SUPERFERRY, INC.)	Docket No. 04-0180
)	
For a Certificate of Public Convenience and)	
Necessity to engage in operations as a Water)	
Carrier.)	
_____)	

STIPULATED PROCEDURAL ORDER NO. _____

Filed _____, 2004

At _____ o'clock _____ .M.

Chief Clerk of the Commission

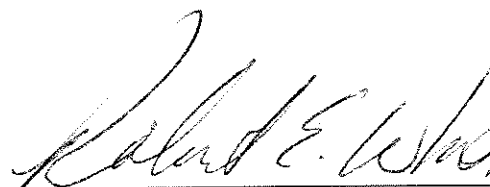
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)	
)	
HAWAII SUPERFERRY, INC.)	Docket No. 04-0180
)	
For a Certificate of Public Convenience and)	
Necessity to engage in operations as a Water)	
Carrier.)	
_____)	

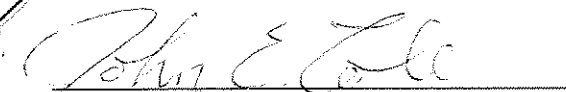
STIPULATED PROCEDURAL ORDER

Applicant HAWAII SUPERFERRY, INC. ("Hawaii Superferry") and the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs (the "Consumer Advocate") hereby stipulate that the attached Stipulated Procedural Order is mutually acceptable to each respective party.

DATED: Honolulu, Hawaii, July 23, 2004.



ROBERT E. WHITE
Chief Operating Officer
Hawaii Superferry, Inc.



JOHN COLE
Executive Director
Division of Consumer Advocacy
Department of Commerce and Consumer Affairs

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)	
)	
HAWAII SUPERFERRY, INC.)	Docket No. 04-0180
)	
For a Certificate of Public Convenience and)	
Necessity to engage in operations as a Water)	
Carrier.)	
_____)	

STIPULATED PROCEDURAL ORDER

On July 22, 2004, Hawaii Superferry, Inc. ("Hawaii Superferry") filed an application to engage in operations as a water carrier pursuant to Section 271G-10, Hawaii Revised Statutes. Hawaii Superferry served copies of the application on the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs (the "Consumer Advocate" or "CA").

Hawaii Superferry and the Consumer Advocate met informally to formulate a stipulated scheduling order for submission to the Commission for approval.

Hawaii Superferry and the Consumer Advocate have reached agreement on procedural matters and submit this Stipulated Procedural Order to the Commission, which is acceptable to the parties.

ACCORDINGLY, IT IS ORDERED that the following Statement of Issues, Schedule of Proceedings, and procedures shall be utilized in this docket.

I.

STATEMENT OF THE ISSUES

The issues in this docket are:

1. Whether Applicant is fit, willing and able to properly perform the proposed service and to conform to the provisions of the Hawaii Water Carrier Law, Chapter 271G, Hawaii Revised Statutes, and the requirements, rules and regulations of the Commission thereunder.
2. Whether Applicant's proposed service is or will be required by the present or future public convenience and necessity.
3. Whether Applicant's proposed service is consistent with the public interest and transportation policy of the State of Hawaii as set forth in the declaration of policy in Hawaii Revised Statutes §271G-2.

II.

SCHEDULE OF PROCEEDINGS

Hawaii Superferry Application to engage in operations as a water carrier	July 22, 2004
CA Information Requests ("IRs") to Hawaii Superferry ¹	August 16, 2004
Hawaii Superferry Responses to CA IRs ¹	September 7, 2004
CA Supplemental Information Requests ("SIRs") to Hawaii Superferry, if necessary	September 27, 2004

¹ Whenever possible, parties will provide copy of documents on diskette upon request.

Hawaii Superferry Responses to CA SIRs	October 11, 2004
CA Statement of Position ("SOP")	October 29, 2004
Hawaii Superferry IRs, if necessary*	November 9, 2004
CA IR responses*, if Hawaii Superferry IRs filed	November 19, 2004
Hawaii Superferry Reply SOP*	November 30, 2004

* If the CA objects to approval of the application, or requests that approval be subject to conditions.

If there are substantial disagreements following the filing of SOPs, and the parties cannot resolve the differences by stipulation and the parties do not waive the right to a hearing, the parties shall propose a hearing schedule (including the filing of simultaneous post-hearing briefs) for Commission approval.

If Hawaii Superferry determines that IRs to the CA are unnecessary, and/or a Hawaii Superferry Reply SOP is unnecessary, Hawaii Superferry and the CA will notify the Commission that the proceeding is ready for decision-making.

III.

MISCELLANEOUS MATTERS TO FACILITATE AND EXPEDITE THE ORDERLY CONDUCT OF THESE PROCEEDINGS

A. Requests for Information

To the extent practical, Hawaii Superferry and the Consumer Advocate will cooperate (1) by exchanging information requests and responses as they become

available, and (2) by resolving questions regarding information requests and responses informally to attempt to work out problems with respect to understanding the scope or meaning of information requests, or with respect to the availability of information. If a party is unable to provide the information requested within the prescribed time period, it should so indicate to the inquiring party as soon as possible. The parties shall then endeavor to agree upon a later date for submission of the requested information.

In lieu of responses to information requests that would require the reproduction of voluminous documents or materials, the documents or materials may be made available for reasonable inspection and copying at a mutually agreeable designated location and time. In the event such information is available on computer diskette or other readily usable electronic medium, the party responding to the information request may make the diskette or such electronic medium available to the other party and the Commission.

A party shall not be required, in a response to an information request, to provide data that are already on file with the Commission or otherwise part of the public record, or that may be stipulated to pursuant to Part B, infra. The responding party shall, in lieu of production of a document in the public record, include in its response to the information request an identification of the document with reasonable specificity sufficient to enable the requesting party to locate and copy the document. In addition, a party shall not be required, in a response to an information request, to make computations,

compute ratios, reclassify, trend, calculate, or otherwise rework data contained in its files or records.

A party may object to responding to an information request that it deems to be irrelevant, immaterial, unduly burdensome, onerous or repetitious, or where the response contains information claimed to be privileged or subject to protection (confidential information). If a party claims that information requested is confidential, and withholds production of all or a portion of such confidential information, the party shall: (1) provide information reasonably sufficient to identify the confidential information withheld from the response, without disclosing privileged or protected information; (2) state the basis for withholding the confidential information (including, but not limited to, the specific privilege applicable or protection claimed for the confidential information and the specific harm that would befall the party if the information were disclosed); and (3) state whether the party is willing to provide the confidential information pursuant to a protective order governing this docket.

A party seeking production of documents notwithstanding a party's claim of confidentiality, may file a motion to compel production with the Commission.

B. Matters of Public Record

In order to provide a means to reduce unnecessary reproduction of documents and to facilitate these proceedings, identified matters of public record, such as published decisions of this or other Commissions, published scientific or economic statistical data,

material and textbooks, technical or industry journals relating to water carrier matters, and specified parts of the record in previous Commission dockets shall be admissible in this proceeding without the necessity of reproducing each document; provided that the document to be admitted is clearly identified by reference to the place of publication, file or docket number, and the identified document is available for inspection by the Commission and the parties; and further provided that any party has the right to explain, qualify or conduct examination with respect to the identified document. The Commission can rule on whether the identified document can be admitted into evidence when a party proffers such document for admission as evidence in this case.

From time to time, the parties may enter into stipulations that such documents, or any portion of such documents, may be introduced into evidence in this case.

C. Copies of Filings and Information Requests.

1. Filings:

Commission	Original + 8 copies
Hawaii Superferry	2 copies
Consumer Advocate	2 copies

2. Information Requests and Responses:

Commission	Original + 8 copies
Hawaii Superferry	2 copies
Consumer Advocate	2 copies

3. All pleadings, and other documents required to be filed with the Commission shall be filed at the office of the Commission in Honolulu within the time

limit prescribed pursuant to Chapter 61, subchapter 2, section 6-61-15 of the Commission's Rules of Practice and Procedure.

4. Copies of all filings, information requests and information request responses should be sent to the other parties by hand delivery or via U.S. mail. In addition, if available, all parties shall provide copies of their filings, information requests and information request responses to the other parties via diskette or e-mail in a standard electronic format that is readily available by the parties. The parties agree to use Word 97, Word 2000 or Word XP (2002) as the standard programming format for filings in this case. However, if workpapers, documentation, or exhibits attached to any filing are not readily available in an electronic format, a party shall not be required to convert such workpapers, documentation, or exhibits into an electronic format. Also, existing documents produced in response to requests need not be converted to Word 97/Word 2000/Word XP (2002) as long as the applicable format is identified. In the event a copy of a filing, information request or information request response is delivered to a party via diskette or e-mail, unless otherwise agreed to by such party, the same number of copies of such filing, information request or information request response must still be delivered to such party by hand delivery or via U.S. mail as provided in Parts C.1 and C.2 above.

D. Communications

Chapter 61, subchapter 3, section 6-61-29 of the Commission's Rules of Practice and Procedure concerning ex parte communications is applicable to any communications

between a party and the Commission. However, the parties may communicate with Commission counsel on matters of practice and procedure through their own counsel or designated representatives.

Communications between the parties should either be through counsel or through designated representatives. All pleadings, papers, and other documents filed in this proceeding shall be served on the opposing party. All motions, supporting memoranda, and the like shall also be served on opposing counsel.

E. General

These procedures are consistent with the orderly conduct of this docket.

Pursuant to Chapter 61, subchapter 3, section 6-61-37 of the Commission's Rules of Practice and Procedure, this Stipulated Procedural Order shall control the subsequent

courses of the proceedings, unless modified at or prior to the hearings (if any) to prevent manifest injustice.

DONE at Honolulu, Hawaii, this ____ day of _____, 2004.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By _____
Carlito P. Caliboso, Chairman

By _____
Wayne H. Kimura, Commissioner

By _____
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

Benedyne S. Stone
Commission Counsel

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Stipulated
Procedural Order No. _____ upon the following parties and participant, by causing a
copy hereof to be mailed, postage prepaid, and properly addressed to each such party or
participant.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
335 Merchant Street, Room 326
Honolulu, Hawaii 96813

JOHN GARIBALDI
Hawaii Superferry, Inc.
Pier 19, Ferry Terminal
Honolulu, Hawaii 96817

THOMAS W. WILLIAMS, JR.
AUDREY E.J. NG
DARCY L. ENDO OMOTO
GOODSILL ANDERSON QUINN & STIFEL
1800 Alii Place
1099 Alakea Street
Honolulu, Hawaii 96813

Karen Higashi

DATED: _____

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21194 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

JOHN L. GARIBALDI,
CHIEF EXECUTIVE OFFICER
HAWAII SUPERFERRY, INC.
Pier 19, Ferry Terminal
Honolulu, HI 96817

THOMAS W. WILLIAMS, JR., ESQ.
AUDREY E. J. NG, ESQ.
DARCY L. ENDO-OMOTO, ESQ.
GOODSILL ANDERSON QUINN & STIFEL
Alii Place, Suite 1800
1099 Alakea Street
Honolulu, HI 96813



Karen Higashi

DATED: AUG 03 2004